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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,184	01/24/2001	Max G. Paping	00771.00011	2121

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EXAMINER

RESAN, STEVAN A

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,184

Applicant(s)

PAPING, MAX G.

Examiner

Stevan A. Resan

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17-19 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4,8,14,18, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Nesbitt US 5549938 for the reasons of record . See Fig 1,8 ;Col 4 lines 7-19,27-31; Col 5 lines 2, 21-26,41-65.
3. Claims 1-4,12,14,18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sano US 4663874 for the reasons of record . See Fig 2, Col 1 lines 11-15; Col 2 lines 63-64, Col 4 lines 7-8
4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Nesbit or Sano et al as applied to claim 1 above, and further in view of Karalus US 3078183 for the reasons of record.
5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Nesbit or Sano et al as applied to claim 1 above, and further in view of Darango US 5226792 for the reasons of record.
6. Claims 6,7,9,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbitt or Sano et al as applied to claim 1 above, and further in view of Clark US 2599047.

7. Claims 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbitt or Sano et al as applied to claim 1 above, and further in view of Freedman US 4713273 for the reasons of record.

8. Claims 5, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesbitt as applied to claim 1 for the reasons of record.

9. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as previously noted in the last office action.

10. Applicant's arguments filed 11 March 2004 have been fully considered but they are not persuasive.

Applicants argue against the rejection based upon Nesbit by arguing that the purpose of camouflage is to avoid being seen and that the paint reflects little if any impinging light. Applicants argue therefore that the panels therefore do not contain a light active layer or reflective layer having signaling properties and hence cannot anticipate the present claims.

However the examiner disagrees. Lacking a definition in the specification of the terms "light active" and "signaling properties" the examiner must give the terms their broadest possible interpretation. In order for a pattern or color to be seen it must reflect back some light to the viewer. The pigment acts without external energizing to change

the properties of incident light, i.e. absorbing some wavelengths while reflecting other wavelengths. The reflected wavelengths of the light determining the color. Camouflage merely attempts to closely approach the same patterns and reflected light intensity and color (wavelengths) of the surrounding environment thus signaling to an observer that the vehicle is part of the natural surrounding environment. (The examiner also notes, however that the same camouflage on a pickup truck in a city area may be a signal to draw attention to the truck and driver as being a hunter or "Macho".)

Applicants argue against the rejection based upon Sano in a similar manner arguing that there is nothing in Sano to indicate that the advertisement light active second layer is a **"reflective layer having signaling properties"**.

While it may have been **obvious** to have had **special features** in the invention of Sano, the basic function of the invention of Sano is to provide an **advertising message**. The definition of advertise is to call attention to or **warn (From the OFr stem *advertir*)**. Webster's New World Dictionary Third College Edition. The same arguments with respect to light reflection and signaling applied above are incorporated herein.

With respect to Karalus, Durango, Clark and Freedman applicants have not attacked the motivation or merits for combination but base their argument on the perceived deficiencies of Nesbit and Sano which the examiner has addressed above.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lund US 6,178,676 is cited for teaching a triangular warning device which may be securely attached to an automobile by closing a tab in a window.

Berg US 5,031,347 is cited for teaching a warning device which may be securely attached to an automobile by closing a tab in a window and is inclined; the warning device may include triangular symbols attached to the sign.

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stevan A. Resan whose telephone number is 571-272-1513. The examiner can normally be reached on Tues-Thurs from 7:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached at 571-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


STEVAN A. RESAN
PRIMARY EXAMINER